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Attorney for Defendant
ROBERT ROZELLE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CASE NO. CR-92-336-CBM
)	
Plaintiff,)	DEFENDANT'S OBJECTIONS TO
)	REPORT AND RECOMMENDATION
v.)	
)	
ROBERT ROZELLE)	DATE: July 21, 2008
)	TIME: 1:30 p.m.
Defendant.)	

I.

**THE COURT SHOULD TERMINATE SUPERVISED
RELEASE BECAUSE THE DEFENDANT SERVED
AN EXTRA 30 MONTHS IN PRISON
UNDER THE OLD CRACK COCAINE GUIDELINES**

The probation department has filed a request for revocation of supervised release against defendant, Robert Rozelle, for three reasons. He was convicted of driving under the influence on February 5, 2008. He failed to notify the probation officer within 72 hours for his being arrested for driving under the influence. On January 28 and February 18, 2008, he supplied urine samples which were found to contain alcohol. The probation officer is recommending that Mr. Rozelle be placed on six months

1 home detention with alcohol monitoring. Mr. Rozelle is asking
2 that the Court terminate supervised release.

3 Mr. Rozelle served an extra 30 months in prison under
4 the old Crack Cocaine Guidelines. He was already released when in
5 November of 2007, the United States Sentencing Commission amended
6 the guidelines in response to severe criticism about the
7 unfairness of the 100 to 1 crack/powder ratio incorporated into
8 the Sentencing Guidelines. See, United States Sentencing
9 Commission Report To Congress: Cocaine and Sentencing Policies
10 (May 2007). See also, Kimbrough v. United States, 128 S.Ct. 558,
11 568-569 (2007) (Discussing History of Crack Cocaine Guidelines in
12 Various Sentencing Commission Reports).

13 On March 16, 1998, the defendant was sentenced to 156
14 months. The base offense level was calculated in his case based
15 upon 133 grams of crack cocaine which called for an offense level
16 of 32. In November of 2007, the Guidelines were amended so that
17 now the offense level for 133 grams of crack cocaine is level 30.
18 After adjustments for possessing a firearm and acceptance of
19 responsibility the final offense level in 1995 was offense **level**
20 **31** which called for a sentence in Criminal History Category IV of
21 **151 to 188 months**. Under the new reduced Guidelines for crack
22 cocaine, Mr. Rozelle's final offense level would be **level 29**,
23 which in Criminal History Category IV calls for a sentence between
24 **121 and 151 months**.

25 In 1995, the Court imposed a sentence of 156 months,
26 which was 5 months above the low-end. A sentence of 5 months
27 above the low-end of level 29 would be a sentence of 126 months.
28 This is a 30 months difference. Since Mr. Rozelle has already

1 served the sentence, this means that Mr. Rozelle received no
2 benefit from the recent reforms and has served 30 months more
3 under the old crack Guidelines that he would not have served under
4 the amended Guidelines.

5 Obviously the Court cannot reduce a prison term that has
6 already been served. However, the Court can give Mr. Rozelle some
7 benefit of the reforms in the Crack Sentencing Guidelines by
8 reducing the term of supervised release from 10 years to time
9 served. Mr. Rozelle has served approximately 4 years and 6 months
10 on supervised release.

11 His only criminal offense during that time is the
12 commission of a misdemeanor driving under the influence. He has
13 already pleaded guilty and has been sentenced to probation in
14 State Court for that offense. As a condition of probation, he is
15 required to attend alcohol education classes. He has therefore
16 already been punished for this offense.

17 Mr. Rozelle has reformed himself since being released
18 from federal prison. He now has a job as a surgery technician.
19 He is employed in Marina Del Rey Hospital. He is a spinal surgery
20 specialist, assisting the physicians during surgery. He attended
21 a special school in order to be trained for this type of job. He
22 applied himself in school and received A's in his classes. He
23 currently has a stable residence, residing with his family. He is
24 taking care of his father, grandfather, and grandmother, who are
25 all ill and in need of various types of therapy.

26 The purpose of supervised release is to ensure that Mr.
27 Rozelle does not revert back to drug trafficking. That has not
28 occurred. He is hard-working and a contributing member of the

1 community. He asks not to be placed on house arrest and that the
2 Court order his supervised release to be terminated.
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5 Respectfully Submitted,
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7 /s/ Joseph F. Walsh
8 JOSEPH F. WALSH
9 Attorney for Defendant
10 ROBERT ROZELLE
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is 316 West Second Street, Suite 1200, Los Angeles, California 90012.

On June 19, 2008, I served the foregoing document described as **DEFENDANT'S OBJECTIONS TO REPORT AND RECOMMENDATION** on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**DAVID HERZOG
U.S. Attorney
312 North Spring Street
Los Angeles, California 90012**

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 19, 2008, at Los Angeles, California.

/s/ Ana Kim
ANA KIM